IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.1044 of 2025

P.Vijayanand ... Appellant

Vs.

1.Sivalingam Sadhappan
2.Karthik Srinivasan Pobathy ... Respondents

PRAYER: Criminal Appeal filed under Section 419 of BNSS, praying to allow the above appeal by setting aside judgment dated 23.10.2024 passed in STC.No.227 of 2022 by the learned Judicial Magistrate, Fast Track Court at Poonamallee with regard to the 2nd and 4th accused and to convict the respondents/2nd and 4th accused as prayed for.

For Appellant : Mr.M.V.Seshachari

For Respondents : Mr.B.Pachaiyappan

JUDGMENT

This criminal appeal has been preferred against the judgment passed in STC.No.227 of 2022 dated 23.10.2024 on the file of the learned Judicial Magistrate, Fast Track Court, Poonamallee, thereby acquitted the accused Nos.2 & 4 for the offence punishable under Section 138 of NI Act.

2. The appellant lodged complaint against four persons for the offence punishable under Section 138 of NI Act alleging that the first accused represented by its Directors /accused 2 to 4 entered into a franchise agreement dated 20.10.2019 with respect of franchise invested company operated model for opening an outlet under the brand name 'Attapetta'. Accordingly, the appellant had invested a total sum of Rs.1,27,00,000/- in the franchise business. The accused had undertaken to pay monthly share of 15% of the revenue generated from the sale of products and provisions of service at the outlet or a minimum guarantee of Rs.3,81,000/- per month. In order to discharge the aforesaid minimum guarantee payment, the accused company issued three cheques for a sum of Rs.3,81,000/- each. Both the cheques were presented for collection. However both were returned dishonoured for the reason 'payment stopped by drawer'. After causing statutory notice, the complaint was lodged.

3. In order to prove the complaint, the appellant was examined as PW1 and marked Ex.P1 to Ex.P59. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidences, the trial court found A1 & A3 guilty for the offence punishable under Section 138 of NI Act whereas A2 and A4 were found not guilty and were

acquitted for the offence punishable under Section 138 of NI Act. Aggrieved by the order of the trial court in respect of acquittal of A2 & A4, the present criminal appeal has been filed by the complainant.

4. The learned counsel for the appellant would submit that admittedly the first accused entered into a franchise agreement dated 20.10.2019. A2 to A4 are Directors of the first accused company. On receipt of the investment to the tune of Rs.1,27,00,000/-, the first accused issued cheques for security purpose. As per the agreement, 15% of the revenue generated from the sale of products, the accused has to pay monthly revenue. Though they had paid some amount, eventually they committed default and as such, the security cheques were presented for collection. The agreement was marked as Ex.P1 and the cheques were marked as Ex.P2 to Ex.P4. All the cheques were signed by A2 and A3. Therefore, all the accused are vicariously liable to be punished for the offence punishable under Section 138 of NI Act. However, the trial court acquitted the respondents herein, who were arrayed as A2 and A4 for the offence punishable under Section 138 of NI Act. When the accused 2 to 4 are Directors of the first accused company and they had actively participated in the day to day affairs of the first accused company, they are also liable to be punished. A2 & A3 categorically admitted their signatures and issuance of cheque and even then,

the trial court without any reason, acquitted A2 and A4. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***SMS Pharmaceuticals Limited Vs. Neeta Bhalla and another*** reported in ***(2005) 8 SCC 89***, in which the Hon'ble Supreme Court of India held that the Managing Director or General Director would be admittedly in charge of the company and responsible to the company for the conduct of its business. The holders of such position in a company become liable under Section 141 of NI Act.

5. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

6. On perusal of the records, it is revealed that the first accused and the third accused entered into the franchise agreement with the appellant herein, thereby they had undertaken to pay monthly revenue share of 15% of the revenue generated from the sale of products and provisions of service at the outlet or a minimum guarantee of Rs.3,81,000/- per month, whichever is higher. The said agreement was marked as Ex.P1. After quite a some time, the first accused failed to pay the minimum guarantee as undertaken by them. Therefore, the appellant filled the cheques which were issued for security purpose for a

sum of Rs.3,81,000/- per month and presented all the cheques. Ex.P1 is the agreement entered into between the appellant and A1 & A3, no other Directors executed any agreement. In the statutory notice as well as the complaint, the appellant mentioned that accused 2 to 4 are Directors of the first accused company. However, except the agreement, no other documents nor evidences were produced by the appellant to show that the accused 2 to 4 were Directors of the first accused company and they were engaged in the day to day affairs of the company. The third accused alone was mentioned as Director and the cheque was issued. Therefore, the contention of the appellant that the accused 2 to 4 actively participated in the day to day affairs of the first accused company, was not substantiated by any evidence. Therefore, the trial court rightly concluded that A2 and A4 were neither Directors nor actively participated in the activities of the first accused company.

7. Though the learned counsel for the appellant submitted that e-mail's from all the accused persons to the complainant were marked before the trial court, it does not reveal that the respondents were Directors of the first accused company on the date of the presentation of the cheque. Further, the cheques were admittedly issued for the purpose of security. The appellant also failed to prove that the accused failed to pay the minimum guarantee of Rs.3,81,000/-.

Therefore, the judgment relied upon by the learned counsel for the appellant is not applicable to the case on hand when the appellant failed to prove that the respondents herein are the Directors of the first accused company and they are liable to be punished for the offence punishable under Section 138 of NI Act. As such, the trial court rightly acquitted the respondents herein and this Court finds no infirmity or illegality in the impugned order.

8. In view of the above discussion, this criminal appeal stands dismissed. It is made clear that any of the observations made by this Court in this order may not influence the appellate court to decide the appeal filed by the convicted accused.

24.07.2025
(2/3)

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
lok

To

The learned Judicial Magistrate, Fast Track Court at Poonamallee

G.K.ILANTHIRAIYAN, J.
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